IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.R. No. 3653 of 1998
Date of Decision: 22.11.2006

Prabha Kanta Sharma.

..... Petitioner.

Versus

Smt.Gian Mala Verma.

..... Respondent.

CORAM: Hon'ble Mr.Justice Mahesh Grover

....

Present: Shri Amit Rawal, Advocate for the petitioner.
Shri Amit Jain, Advocate for the respondent.

....

Mahesh Grover,J.

This is a revision petition preferred by the land-lady of Shop-cum-Flat No.34, Sector 23-C, Chandigarh against judgment dated 9.1.1998 passed by the Appellate Authority, Chandigarh in Rent Appeal No.108 of 5.1.1993.

The petitioner initiated eviction proceedings against the respondent, who was tenant on the first floor of the aforementioned building (hereinafter described as `the demised premises') by filing a petition under Section 13(2)(ii) and (3)(i) & (iv) of the East Punjab Urban Rent Restriction

Act,1948 on the grounds of change of user from residential to commercial, material impairment, non-payment of rent and bona fide requirement for her own use and occupation. The petitioner pleaded that the demised premises was let out to the respondent at a monthly rent of Rs.275/- per month for residential purposes. It was alleged that the respondent did not pay the rent and started using the demised premises for running a college/school on commercial basis, which resulted in the impairment of the value thereof.

The respondent had not denied the tenancy, but had pleaded that the demised premises were being used as a college/ school ever since the inception of the tenancy and it was never given out for residential purposes. Besides, it was averred that no change had been effecting in the demised premises. The bona fide requirement of the petitioner was also disputed.

The Rent Controller, Chandigarh allowed the petition vide his judgment dated 17.11.1992 and ordered the eviction of the respondent from the demised premises on the grounds of material impairment and change of user. While concluding, the Rent Controller had returned a composite finding on two issues of change of user and material impairment to say that since the demised premises were being used for commercial purposes, it had resulted in material impairment in the value thereof.

In an appeal preferred by the respondent against the judgment of the Rent Controller, the Appellate Authority maintained the eviction order only on the ground of material impairment vide its judgment dated 9.1.1998. The issue of change of user did not find favour with the Appellate Authority.

This resulted in the respondent-tenant's filing a revision petition bearing no.605 of 1998 before this Court. The petitioner also filed the instant petition in April,1998 assailing the findings of the Appellate Authority on the issue of change of user.

Civil Revision No.605 of 1998 preferred by the respondent was allowed by this Court on 29.4.1998 setting aside the judgment of the Appellate Authority. Resultantly, the eviction petition was dismissed. The concluding part of the said judgment reads as under:-

> "For these reasons, the impugned order of the learned Appellate Authority is set aside. Instead the petition for eviction is dismissed."

The petitioner filed Petition for Special Leave to Appeal against the order of this Court, which was also dismissed by the Apex Court on 4.1.1999.

Learned counsel for the petitioner contended that even though, the revision petition preferred by the respondent had been allowed and the judgment of the Appellate Authority had been set aside, yet, the petitioner was not precluded from challenging the findings of the Appellate Authority on the issue of change of user which were against her.

On the other hand, learned counsel for the respondent contended that once the judgment of the Appellate Authority has been set aside in toto after hearing the petitioner, no cause of action survived to her and the instant revision petition had, in fact, become infructuous and more-so when Petition for Special Leave to Appeal has also been dismissed by the Apex Court. That apart, the petitioner moved C.M.No.22467-CII of

2006 for modification of the order dated 29.4.1998 passed in C.R.No.605 of 1998, which has also been dismissed on 21.11.2006.

I have heard the learned counsel for the parties at some length and have perused the record.

Undeniably the instant petition was pending at the time when this Court passed order dated 29.4.1998 in C.R.No.605 of 1998. The petitioner was a party to the aforesaid revision petition and was heard. No attempt was made by the petitioner to bring the factum of pendency of the present revision petition to the notice of the Court and rather, the fact was cleverly concealed. This Court decided C.R. No.605 of 1998 after hearing both the sides and being totally oblivious of the pendency of the present revision petition. Subsequently, the ex parte order of admission of this petition came into being after the decision of C.R.No.605 of 1998 because the acceptance of C.R.No.605 of 1998 was not brought to the notice of this Court. It was clearly an attempt to overreach the Court by concealing the material facts. The situation is compounded further by the fact that the same counsel, who was representing the petitioner in C.R.No.605 of 1998, had filed the instant petition. Therefore, it cannot even be said that the petitioner or her counsel were ignorant of the earlier proceedings. Besides, the petitioner having contested the revision petition preferred by the respondent without bringing this fact to the notice of this Court has not only exposed herself to the charge of subtle acquiescence of his right to assail the findings of the Appellate Authority, but has also laid herself bare to the charge of concealment and suppression of material facts. Moreover, at the time of admission of the present petition on 16.12.1999, the Hon'ble

Supreme Court had already dismissed the Petition for Special Leave to Appeal on 4.1.1999.

The petitioner, by her conduct, has clearly dis-entitled herself to any further indulgence by this Court, especially in view of the overwhelming fact that the judgment of the Appellate Authority which is subject-matter of challenge in the present revision petition has been categorically set aside in C.R. No.605 of 1998 and in the concluding part of order dated 29.4.1998 passed in that revision petition, the eviction petition has been rejected. Besides, as noticed above, the conduct of the petitioner is reprehensible and this Court is restraining its hands from imposing any punitive costs upon her.

For the reasons stated above, the revision petition is dismissed.

November 22,2006 (Mahesh Grover)
"SCM" Judge